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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/701,948	03/16/2001	Jo McKnight	9404:7285	1687

7590

06/15/2006

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EXAMINER

WATKINS III, WILLIAM P

ART UNIT	PAPER NUMBER
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1772

DATE MAILED: 06/15/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/701,948

Applicant(s)

MCKNIGHT ET AL.

Examiner

William P. Watkins III

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 24 March 2006.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1,2,4,21,22,24-33 and 35-39 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 1,2,4,21,22,24-33,35-37 and 39 is/are allowed.
- 6) ☒ Claim(s) 38 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 24 March 2006 has been entered.

2. Claims 1-2, 4, 21-22, 24-33, 35-37 and 39 remain allowed for the reasons given in section 1 of the detailed portion of the office action mailed 09 April 2003.

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

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4. Claim 38 is rejected under 35 U.S.C. 103(a) as being unpatentable over Watkins (U.S. 5,305,483) in view of Hurley (U.S. 2,826,244) further in view of Frankenberg (U.S. 4,326,310).

Watkins teaches a porous foam layer with conveys air from an adjacent air pocket up through holes in a cover sheet on the foam layer (col. 3, lines 20-40). Frankenberg teaches use of an adhesive to attach a porous cover layer to a foam layer of a pad in order to provide a secure attachment to the foam layer (col. 2, lines 35-45 and col. 2, lines 50-60). Hurley teaches using channels in a foam pad layer to enhance the transverse flow of air in the pad (element 24, col. 3, lines 45-60). The instant invention claims a permeable material next to an impermeable sheet with perforations with means to flow air through a transverse direction through the permeable layer and into the perforations of the top perforated layers. It would have been obvious to one of ordinary skill in the art to have placed channels in the foam layer of Watkins in order to avoid the use of an external air pocket and enhance transverse flow because of the teachings of Hurley. It further would have been obvious to secure by lamination the cover layer of Watkins in view of

Hurley in to provide secure attachment of the cover layer because of the teachings of Frankenberg.

5. Applicant's arguments with respect to claim 38 have been considered but are not found to be persuasive.

Applicant has added language that the claimed flexible sheet is intended for covering a mattress and that when in use covering the mattress; it contacts the body of a person lying on the mattress. Applicant then argues that at best the ventilated portion of Watkins can only be considered as a pillow and that a pillow cannot meet the above described claim language. The examiner disagrees. Even if the teachings of the combination are taken as applying only to a pillow, a pillow is commonly used on top of a mattress and usually is contacted by part of the body of the person using the mattress (the head being part of the body in Watkins).

There is no reason that the entire assembly taught by Watkins as modified could not be placed on top of an existing mattress in an infant crib or the pillow portion used separately on a mattress in a different type of bed. Hurley teaches use of ventilation on a seat cushion to provide comfort to a part of the body other than the head. There is no reason that one of

ordinary skill in the art would not extend the construction of Watkins as modified in the above rejection to any part of the support structure of Watkins that is in contact with any portion of a body in order to enhance comfort because of the teachings of the Hurley. Thus the instant claim language is clearly met by multiple possible uses and configurations taught by the combination of the references.

6. All claims are drawn to the same invention claimed in the application prior to the entry of the submission under 37 CFR 1.114 and could have been finally rejected on the grounds and art of record in the next Office action if they had been entered in the application prior to entry under 37 CFR 1.114.

Accordingly, **THIS ACTION IS MADE FINAL** even though it is a first action after the filing of a request for continued examination and the submission under 37 CFR 1.114. See MPEP § 706.07(b). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action

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is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

7. Any inquiry concerning this communication or earlier communications from the examiner should be directed to William P. Watkins III whose telephone number is 571-272-1503. The examiner works an increased flex time schedule, but can normally be reached Monday through Friday, 11:30 A.M. through 8:00 P.M. Eastern Time. The examiner returns all calls within one business day unless an extended absence is noted on his voice mail greeting.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Harold Pyon can be reached on 571-272-1498. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

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WW/ww

June 10, 2006

William P. Watkins

WILLIAM P. WATKINS II
PRIMARY EXAMINER